# Enforcement Software Systems

## Uniform Fine Assessment (UFA)

## Caserite

# UNIFORM FINE ASSESSMENT SOFTWARE

# UFA

► The Uniform Fine Assessment (UFA) software is designed to increase uniformity of civil penalties assessed against a carrier.

► Congress mandate that nine statutory criteria be considered when assessing civil penalties.

## The Nine Statutory Criteria are:

**The Nature Of The Violation** – Determine whether the violations are acute, critical, non-recordkeeping, recordkeeping, etc.

**The Circumstances Of The Violation** – Determine whether there were any mitigating (lesser) or aggravating circumstances.

**The Extent Of The Violation** – Determine whether the magnitude, scope, frequency, and range are isolated or widespread.

**The Gravity Of The Violation** – Determine whether the violation is severe or likely to result in or contribute to an accident.

# UFA

**The Culpability Of The Motor Carrier, Shipper, or Driver** – Determine whether there was knowledge of the violation, and was responsible for the violation, and was there intent to commit the violation.

**The Subject's History Of Prior Violations And Enforcement Actions** – Determine on previous enforcement actions which indicate the motor carrier is continuing to operate in noncompliance.

**The Subject's Ability To Pay** and **Continue In Business -** These factors are insufficient justification to <u>not</u> take enforcement action. (These two factors are considered jointly within UFA and on the Penalty Assessment Worksheets. This is the reason they are combined in this listing.)

**The Subject's Attitude Toward Compliance And Willingness/Ability To Comply -** This factor can help determine a borderline enforcement decision, in conjunction with other matters as justice and public safety may require.

# UFA

Discuss any deviation in using the UFA with the Federal Program Specialist, who will consult with the Service Center Enforcement Team.  Any deviation in the UFA should be thoroughly documented in Part C of CAPRI and in the Memo field of UFA.

# UFA

- ► Exceeding or going below the recommended aggregate penalty <u>must</u> be thoroughly documented in Part C of CAPRI and noted in the Memo field of UFA.

- ► All cases which fall below the aggregate penalty range are signed off by Field Administrator

- ► NOTE:  In some cases going below the UFA is a function of the algorithm and can not be avoided.  Example:  One count HazMat cases.

# HISTORY

► A closed enforcement case is defined as:

a NOC with the Admissions Clause or;

a Settlement Agreement with the Admissions Clause or;

a carrier failure to reply to Part 386.14 & a NFAO was issued or;

a AA or ALJ ruling issued in favor of the Agency.

Include a copy of the closed enforcement case as a Letter Exhibit.

**Subject** | **Violation List** | **Violation Criteria** | **Fine Assessment**

## Step 1: General Information

Review Type
- ⊙ CR
- ○ Shipper Only
- ○ CR/CTFR
- ○ CTFR

Name **CALCO EXPRESS INC**

Review Date [1/27/2004]    Case # [WI-2004-0123-US0563]

Gross Revenue [4,503,941]

Total Drivers [30]

Power Units [23]

Factor 6 Rating
- ○ Unsatisfactory
- ⊙ Satisfactory

## Step 2: Case Type

- ○ Hazardous Materials

- ○ Both

## Step 3: Subject History (Past 10 years only)

- ○ No History
- ○ Prior SR or EC
- ○ Previously cited for violations in other Parts, no penalty
- ○ Previously cited for violations in the same Part, no penalty
- ○ Previously assessed or penalized for violations in other Parts
- ⊙ Previously assessed or penalized for violations in the same Part
- ○ Violation of order OR 2 previous enforcement cases

## # of Prior Cases (Past 6 years only)

- ○ None
- ○ One
- ⊙ Two or More

**History on CR violations for 10 years…**

**History on Cases for only 6 Years…**

# EXTENT

▸ Is supported by documenting <u>all violations</u> discovered during a compliance review, which will be considered for UFA.

▸The SI will inform the carrier of each violation during the compliance review.

▸ The NOC will inform the carrier that the violations discovered, but not charged in    the NOC, do affect the civil penalty asserted in the NOC.

▸The discovered violations will be identified in the NOC as Table 1.

  Table 1 is attached to the CR, NOC, and as a Letter Exhibit.

# DOCUMENTED DEFINED

If you are bring a charge in the NOC guidance of the e-FOTM requires the violation to be supported by:

Record of duty status

Bill of lading

Vehicle description - GVWR

Other documents to support violation

Statement when applicable

# DOCUMENTED EXAMPLE

Document all violations discovered during the compliance review, which will be considered for UFA's "extent of violations" factor.

Examples:

- If you discovered 30 false logs out of 150 records checked, but are only including 5 counts in the NOC as claimed violations, the remaining 25 discovered false logs must be documented to the same standard as the 5 counts and that documentation included as a Lettered Exhibit in the enforcement case.

- If you discovered 10 instances of failure to require a driver to prepare a DVIR, but are not taking enforcement for this violation, none of the 10 discovered violations need to be documented.

Penalty Assessment Worksheets

► Driver-Compliance Review/Roadside Insp.

► Carrier-Roadside Inspection

► Carrier/Broker/Freight Forwarder – CR or Roadside Inspection (Commercial Violations)

► Carrier/Broker/Freight Forwarder/Agent – CR or Roadside Inspection (Household Goods Violations)

# UFA - SAFETEA-LU SECTION 4102

► August 10th 2005 SAFETEA-LU signed into law

- Amended USC 521 increase civil penalties

- Effective date 8/10/2005

- UFA software modified

► Documents

- FMCSA Policy document dated 6/29/2006

- Attachment A outlines increased UFA Penalty Provisions – October 2004

► Software release version 2.6.1 (6/1/2006) accommodates SAFETEA-LU increase in penalties

► <u>Note:</u> UFA software cannot differentiate between the time periods before and after February 28, 2006

► Full implementation date was determined by FMCSA to be 2/28/2006 to allow agency time for

- Update ITS system to reflect new changes

- Modify/Clarify appropriate training materials

- Train affected personnel

# UFA - SAFETEA-LU SECTION 4102

► Recordkeeping $550 max to $1000 for each offense with each day constituting separate offense

► Maximum civil penalties were raised from $5500 to $10000 for all offenses related to a single violation

► **Maximum civil penalties were raised from $5500 to $10000 for anyone**

- Falsifies, destroys or mutilates or changes a record

- Knowingly files false reports or false entries on business operation

- Related violations of regulation or order as outlined in June 29,2006 policy

# FMCSA SAFETEA-LU Section 4102
## Policy document dated 6/29/2006

▶ Special steps are to be taken with Notice of Claim and UFA amounts tied to 2/28/2006 date

▶ Recordkeeping violation offenses prior to 2/28/2006 are reduced in accordance with the policy

# CASERITE SOFTWARE

# CaseRite Modules

- ► Errors

- ► Notice of Claim (NOC)

- ► Abatements

- ► Continuation Sheet

- ► Letter Exhibits

- ► Number Exhibits

# Software Set-Up

► **Proper set up will help avoid mistakes**

- After each software update, review the CaseRite configuration found under the Utilities tab and make appropriate changes.

- Ensure the proper information is used for your Division Office and Service Center.

► Most cases are imported into UFA and then into CaseRite.

► If you have to create a case in CaseRite, choose the correct type of case.

      CR or Roadside

      Carrier, Driver, Shipper, Broker, etc.

## The Notice of Claim includes:

- ► Applicable statutes

- ► Admissions Clause
    HOW TO REPLY TO THE NOC; Paragraph 4.

- ► Amount of the penalty assessed

- ► Directions on how to reply

The NOC **MUST** be issued within **20 business days** of the completed CR.

# Notice of Claim

Review the NOC for errors before submission

- ▶ Correct your grammatical errors;
  - ▪ use spell check
  - ▪ add periods and apostrophes in the carrier's information
    - • (these do not transfer from Capri)
- ▶ Read the Statement of Charges for Errors
- ▶ Read the Abatement Clause(s) for Errors
- ▶ Ensure dollar amounts matches UFA (overall case amount and individual count amounts)
- ▶ Compare number discovered & number of counts to Capri and UFA

When must a case be created without using Capri or Aspen?

Special investigations that use a Penalty Assessment Worksheet instead of UFA

- ►Violation of OCO or OOS
- ►Commercial Regulation Violations
- ►HHG, Broker, Freight Forwarder
- ►Penalties against an employee

# Abatement Clauses

Abatement Clauses need to match the violation.

You may have to change the abatement language so it makes sense.

Driver and Shipper cases require editing

Example Change:

"Ensure your records of duty status are accurate."

**to**

"Do not falsify records."

# Edit Violation

**Primary**

395.8(e)

**Secondary**

**Category**

Record Keeping ▼

**Discovered** 8  **Documented** 30  **Fine Amount** 450

Section 222 ☐

UFA Fine Used ☑

**Description**

False reports of records of duty status.

**Change Abatement to:  Do not falsify records of duty status.**

**Abatement**

Ensure all drivers' records of duty status are accurate.  Compare the drivers' records of duty status with other business records in your possession including, but not limited to, toll, fuel, repair, and other on the road expense receipts, as well as invoices, bills of lading, dispatch records, trip reports, and any other document generated by the trip, and driver earnings records, to verify accuracy of duty status record entries.  Prohibit falsification of duty status records by any of your drivers.
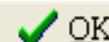
✔ OK    ✗ Cancel

# Continuation Sheet

## DESCRIPTION

►Enter additional information that is not shown in Part A of the Compliance Review.

►Additional names such as corporate officials and their titles should be provided here.

See Appendix D of eFOTM

# Continuation Sheet – Contd.

## DESCRIPTION – continued

If the enforcement report is a <u>driver case</u>, the following information is required:

Full legal name and mailing address.

Driver's license information, issuing State, and license number.

Social Security Number.

Physical description, date of birth, height, weight, color of hair, color color of eyes, and other information as appropriate.

Evidence of ill health or physical impairment

Occupation and description of duties as appropriate. Information on gross income for past year; include any evidence of financial insolvency.

USDOT number driver was operating under.

## Description:

If the enforcement report did not result from a CR or is being prepared for an additional subject such as a <u>driver</u>, the following information is required:

Full legal name and mailing address.

Driver's license information, issuing State, and license number.

Social Security Number.

Physical description, date of birth, height, weight, color of hair, color of eyes, and other information as appropriate.

Evidence of ill health or physical impairment should be described.

Occupation and description of duties as appropriate. Information on gross income for past year; include any evidence of financial insolvency if known or any claimed by the subject of the report.

## Contact Reason:

► Provide the reason for contacting the subject. investigation was initiated because…"

- SAFESTAT

- Complaint

- Investigative lead

- Roadside Strike-force

# Continuation Sheet contd.

Enforcement Reason:

- Enter factual information explaining the reason enforcement action is being taken

    pattern of violations,

    failing to maintain safety management controls,

    serious risk to the public,

    or fatal accident.

# Continuation Sheet contd.

## Enforcement Reason Examples:

This report is being submitted because:

- "This investigation revealed the carrier is operating in noncompliance of the FMCSR.  The carrier did not have a complete driver qualification file for any of the 26 drivers employed.  Two of the 26 drivers had no driver qualification file maintained by the carrier.  Sixteen drivers' records of duty status were checked; all 16 failed to make records when required or they operated in violation of the 10, 15, and 70 hour limits, or falsified their records to conceal violations."
- The carrier has taken no action to correct those areas of non-compliance that were discovered during a previous compliance review.
- Driver admitted, in a written statement, to having falsified the medical examiner's certificate himself.

## Knowledge and Willfulness:

- Enter prior enforcement activity and other efforts that have been taken to encourage compliance.

- Reference should be made to the lettered Exhibit Abstracts that pertain to the information.

## Knowledge and Willfulness Example:

Violations discovered and documented in this report were also cited on the previous compliance review dated 00/00/00 (see Exhibit B).

Following the previous review, carrier President John S. Smith submitted a letter to the FMCSA on 00/00/00 stating the company's operation had been brought into compliance and detailed his personal involvement in the process (see Exhibit C).

Violations of this type and documented in this present report also appeared on state inspection reports which are included as lettered Exhibit D.

<u>Defenses:</u>

The defenses provided by the various company officials interviewed during the investigation.

- Examples:

  "Mr. John S. Smith, carrier President, stated their safety compliance problems have been related to the turnover of personnel in the operations division."

  "Mr. John S. Cooper, Operations Manager, stated there was not enough time to    qualify the new drivers and control their hours due to pressure from their customers."

  "Ms. Jane B. Smoot, Dispatcher/Log Clerk, stated that she had been advising drivers verbally not to drive more than 10 hours without 8 hours off duty."

  "Mr. Jake V. Brown, road driver, advised he was never asked by the company to stay under any certain hours before resting."

# Continuation Sheet contd.

Additional Information:

► Identify the various documents collected during the investigation and identify the person(s) that provided them.

► Identify any witness not previously described in the report.

► As necessary, identify the persons preparing the documents, the person who can explain the purpose and distribution of the documents, or other facts not readily apparent from the face of the documents.

# Continuation Sheet contd.

## Additional Information Example:

► If it is not clear from other parts of the enforcement report, explain the facts which the witnesses can testify to…

- "All carrier documents obtained in this investigation were obtained from John S. Cooper, Operations Manager and Jane B. Smoot, Dispatcher/Log Clerk.  Both of them personally obtained the records from the carrier's files and identified the records of duty status, trip sheets, receipts, and the company's procedures for dispatching freight and controlling the drivers' activities.

- "Mr. John S. Smith, carrier President reported the gross revenue of $750,000 for calendar year 0000."

# Continuation Sheet contd.

## Additional Information (cont.)

▶ Additional Information section can also be used for information about the subject that is not deemed appropriate for any of the above sections

▶ The investigator shall use this section to more fully explain the investigative process, so that agency supervisors, counsel, and decision makers can have a more clear understanding of the facts of the case

  • Example: "Included herein is an explanation as to why the investigator may have deviated from the required sampling requirement of this manual." manual."

# Letter Exhibits

- ► Lettered Exhibits are used when a piece of evidence is being used for multiple counts. A good example would be the sharing of a statement between counts.

- ► Always add a information on the cover page for each lettered exhibit so that the reader knows what and how this documentation supports the case.

- ► One piece of evidence per exhibit; however multiple pages of same evidence is permitted; i.e. equipment list.

## Letter Exhibits

## Documentation to support <u>Extent</u>

**LETTER EXHIBIT STATEMENT:**

The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review and or inspection on 06-01-2005.

## Letter Exhibits

### Table 1 - Extent

| NUMBER | VIOLATION | SUBJECT or VEHICLE | VIOLATION DATE |
|---|---|---|---|
| 1 | 49 CFR 382.301(a) | Driver Charles Smith | 05-03-2005 |
| 2 | 49 CFR 382.301(a) | Driver Gerry Jones | 03-02-2005 |
| 3 | 49 CFR 383.37(a) | Driver Steve Lewis | 04-22-2005 |
| 4 | 49 CFR 395.8(e) | Driver Charles Smith | 05-08-2005 |
| 5 | 49 CFR 395.8(e) | Driver Charles Smith | 05-13-2005 |
| 6 | 49 CFR 395.8(e) | Driver Gerry Jones | 03-23-2005 |
| 7 | 49 CFR 395.8(e) | Driver Steve Lewis | 04-12-2005 |
| 8 | 49 CFR 395.8(e) | Driver Steve Lewis | 04-26-2005 |

# Number Exhibits

- ▶Keep charge statements simple. If additional information is needed you can add it in the Supporting Documents section.

- ▶Use the language provided in the Template, don't create confusing language.

- ▶List your evidence in a logical manner.

- ▶Supporting Documents
  - Explain your evidence – you know how your evidence relates to your count however the reader may not.

# Management Tab

## Management Tab information:

► Gross Revenue

► Tracking Dates

    **Ensure the Management Dates are complete and correct**

- Management Review Date – *leave blank*

- Investigation Assigned – *When CR was assigned to SI*

- Date of CR/Inspection – *Close Out Date of CR by SI*

- Investigation Completed Date – *Date investigation completed and submitted to FPM*

- NOC Date – *Completed by FPM*

# Questions?

# Contacting Technical Support

► Hours:     Mon – Thu 8:00 am to 8:00 pm
                 Friday 8:00 am to 6:00 pm
                 Eastern Time Zone

► Phone:     617-494-3003

► Fax:     617-494-3058

► e-Mail:     FMCTechSup@volpe.dot.gov

► Web:     http://fmcsa-ts.dot.gov